



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
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Assistant Commissioner

**STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES**

K.C.,
:
:
PETITIONER, : **ADMINISTRATIVE ACTION**
:
v. : **FINAL AGENCY DECISION**
:
UNITED HEALTHCARE : **OAL DKT. NO. HMA 02712-2021**
:
RESPONDENT. : **ON REMAND HMA 03798-2020**
:
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As Assistant Commissioner for the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the Office of Administrative Law (OAL) case file. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to render a Final Agency Decision is November 15, 2021 in accordance with an Order of Extension. This matter was previously remanded to OAL for the sole purpose of obtaining a missing exhibit that was necessary to complete this Final Agency Decision.

The matter arises from the United Healthcare's (United) determination that Petitioner¹ was no longer eligible for Pediatric Medical Day Care (PMDC) services as of January 13,

¹ The ALJ referred to Petitioner as "C.K." throughout the Initial Decision in this matter. However, this appears to be an error, as the petitioner initials are K.C.

2020. After an internal appeal upheld the termination of PMDC for the Petitioner, the Petitioner's mother, N.M, appealed the decision on Petitioner's behalf.

During the telephonic hearing on December 2, 2020, N.M. testified that Petitioner is four-years-old² and was born with a chromosome deficiency, has asthma, was recently diagnosed with autism, has acid reflux, requires specially prepared food, and has food allergies such as to eggs and milk.³ N.M. also testified that she administers albuterol to Petitioner in the morning along with other medication for acid reflux and his skin. Petitioner is not on any other medications.⁴ Petitioner receives speech, physical, and occupational therapy at the PMDC. Petitioner does not have a tracheostomy, does not require medical ventilation, does not have any pulmonary or lung-related issues, does not have any feeding or respiration issues, is not diabetic, does not suffer from a seizure disorder, and does not suffer from persistent asthma requiring two treatments per day or frequent medication. Petitioner has not been hospitalized in the last two years. N.M. additionally stated that United Healthcare conducted an assessment of Petitioner in December 2019 via telephone and in person at the day care center.

Mary Helf, R.N., case manager from United Healthcare, additionally testified and stated that she was responsible for the Petitioner's assessment in this matter. Nurse Helf stated that she spoke with N.M. and went to Petitioner's PMDC to conduct the assessment. She further stated that she reviewed Petitioner's medical diagnosis and diagnostic needs and her assessment was entered into evidence. Nurse Helf testified as to Petitioner's

² Petitioner is currently five-years-old.

³ Pursuant to a letter entered into evidence by N.M from Petitioner's PMDC, Petitioner is additionally allergic to peanuts, is under an "Asthma Action Pan" that is to be followed if he experiences wheezing, shortness of breath, cough, and chest tightness, and has reflux precautions that need to be maintained while eating and for thirty minutes post meal. P-1. The letter additionally provided that Petitioner requires supervised ambulation while wearing BLLE AFOs and uses a rolling walker. Ibid.

⁴ The PMDC's letter provided that Petitioner receives Budesonide daily and Albuterol as needed based upon a nurse's assessment. Ibid.

chromosome deficiency, developmental delays, weakness in his muscles, asthma, and autism.

The Initial Decision upholds the termination of PMDC services for the Petitioner, and I concur. PMDCs are “health care service[s] designed to meet the medical, developmental, educational, nutritional and psycho-social needs of medically complex and/or technology-dependent children whose medical condition requires treatment and services beyond the scope provided to children with special health care needs by day care centers or preschool programs.” N.J.A.C. 10:166-1.2. In order for a Medicaid recipient to qualify for PMDC, a functional assessment must be made to determine if the recipient is medically complex or technology-dependent. N.J.A.C. 10:166-3.1(a). An child is considered medically complex if he or she “exhibits a severity of illness[es] that require . . . ongoing skilled nursing intervention.” N.J.A.C. 10:166-1.2. Moreover, a child is considered technology-dependent if he or she “requires specific class III medical device to compensate for the loss of a vital body function to avert death or further disability and ongoing skilled nursing intervention in the use of the device.” Ibid.

I concur with the ALJ’s conclusions that Petitioner is not technology dependent and although he suffers from various issues including developmental delays, asthma, allergies, and autism, his medical conditions, additionally, do not qualify as medically complex, which would require skilled nursing intervention. As noted by the ALJ, N.J.A.C. 10:166-3.1(b)4 provides that skilled nursing needs include, but are not limited to, (i) dependence on medical ventilation; (ii) The presence of a tracheostomy requiring frequent suctioning; (iii) The presence of pulmonary insufficiency requiring positioning, suctioning and/or chest physical therapy; (iv) The need for enteric feeding complicated by either gastroesophageal reflux and risk of aspiration or by a need for frequent venting of the tube, or both; (v) the presence of diabetes requiring blood sugar testing and medication adjustment; (vi) The presence of a seizure disorder manifested by frequent and prolonged seizures requiring emergency

medication administration; and/or (vii) The need for intermittent bladder catheterization. Here, Petitioner suffers from allergies, but as noted by the ALJ, there is no skilled nursing service required for this condition. Similarly, Petitioner's autism diagnosis does not require a skilled nursing service. Moreover, Petitioner's asthma is treated at home by his mother, and as testified to by Nurse Helf, Petitioner's asthma is not severe or persistent and does not require nebulizer treatments more than two times per day. ID at 3. Nurse Helf's December 9, 2019 assessment provided that the PMDC only administered Albuterol treatment to Petitioner once in the three months preceding the assessment. R-6. Additionally, Petitioner's acid reflux and skin medications are administered at home by N.M. Id. at 2. Further, as noted in N.M.'s testimony, Petitioner has also not been hospitalized in the past two years. Ibid. Moreover, N.M. did not advise in her testimony that there has been a significant change in Petitioner's condition since the December 9, 2019 assessment occurred. Accordingly, the December 9, 2019 assessment accurately reflected Petitioner's condition. As it relates to the speech, physical, and occupational therapies that the Petitioner receives at the PMDC, Petitioner can receive these therapies at a regular day care or preschool.

THEREFORE, it is on this ^{12th} day of NOVEMBER 2021,

ORDERED:

That the Initial Decision is hereby ADOPTED.



Jennifer Langer Jacobs, Assistant Commissioner
Division of Medical Assistance and Health Services